

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**Intellectual Ventures I LLC and
Intellectual Ventures II LLC,**

**Plaintiffs/Counter-
Defendants,**

v.

VMware, Inc.,

Defendant/Counter-Plaintiff.

Civil Action No. 1:19-CV-1075-ADA

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION STATEMENT

In accordance with the Court’s December 9, 2019 Order Governing Proceedings – Patent Case (Dkt. No. 44), the parties hereby submit this Joint Claim Construction Statement.

A. Consolidated Briefing

The consolidated briefing by Plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC (“IV” or “Plaintiffs”) is attached herein as Exhibit A. The consolidated briefing by Defendant VMware, Inc. (“VMware” or “Defendant”) is attached herein as Exhibit B.

B. Agreed-Upon Constructions

The parties met and conferred and have been able to reach agreement regarding the construction of the certain terms in the asserted patents.

The chart below provides the construction of those claim terms upon which the parties agree.

Term	Agreed-Upon Construction
“resource” (’686 patent, claims 5-7) (’726 patent, claims 1, 4-5, 8)	“set of functions and features of a physical host, such as disk space, memory, network capacity and processing cycles (CPU resources), used in implementing tasks for each virtual server”

“indication that a first physical host is overloaded” (’686 patent, claim 5-7)	“indication that a first physical host would not support additional resource allocations at that time”
“the first physical host is overloaded” (’686 patent, claims 7) (’726 patent, claims 1, 4-5)	“the first physical host will not support additional resource allocations at that time”
“agent” (’752 patent, claims 1, 3-4, 9 and 24)	“a process that occupies a place and that is mobile i.e. can move from a first place to a second place”
Preamble (’051 patent, claims 1, 3)	The preamble is limiting.

C. Disputed Claim Constructions

Exhibit C attached hereto identifies the disputed claim terms including each party’s proposed construction of each disputed claim term.

Dated: April 17, 2020

WINSTON & STRAWN LLP

/s/ Katherine Vidal

Katherine Vidal
Admitted Pro Hac Vice
KVidal@winston.com
Michael R. Rueckheim
Texas State Bar No. 24081129
MRueckheim@winston.com
Winston & Strawn LLP
275 Middlefield Road, Suite 205
Menlo Park, CA 94025
Telephone: (650) 858-6500
Facsimile: (650) 858-6559

Thomas M. Melsheimer
Texas State Bar No. 13922550
M. Brett Johnson

Texas State Bar No. 00790975
MBJohnson@winston.com
Michael A. Bittner
MBittner@winston.com
Admitted Pro Hac Vice
Winston & Strawn LLP
2121 N. Pearl St., 9th Floor
Dallas, TX 75201
Telephone: (214) 453-6500
Facsimile: (214) 453-6400

Vivek V. Krishnan
Admitted Pro Hac Vice
VKrishnan@winston.com
DaWanna McCray
Pro Hac Vice pending
DMcCray@winston.com
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5600
Facsimile: (312) 558-5700

William M. Logan
Texas State Bar No. 24106214
WLogan@winston.com
Winston & Strawn LLP
1111 Louisiana Street
Houston, TX 77002
Telephone: (713) 651-2766
Facsimile: (713) 651-2700

Attorneys for Defendant
VMware, Inc.

/s/ Robert R. Gilman
DEREK GILLILAND
State Bar No. 24007239
SOREY, GILLILAND & HULL, LLP
109 W. Tyler Street
Longview, Texas 75601
903.212.2822 (telephone)
903.212.2864 (facsimile)
derek@soreylaw.com

KARL RUPP
State Bar No. 24035243
NIX PATTERSON L.L.P.
1845 Woodall Rodgers Fwy. Suite 1050
Dallas, Texas 75201
972.831.1188 (telephone)
972.444.0716 (facsimile)
krupp@nixlaw.com

OF COUNSEL:

Paul J. Hayes
phayes@princelobel.com
Matthew Vella
mvella@princelobel.com
Robert R. Gilman
rgilman@princelobel.com
Jonathan DeBlois
jdeblois@princelobel.com
Alex Breger
abreger@princelobel.com
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, MA 02110
Tel: (617) 456-8000
Fax: (617) 456-8100

COUNSEL for PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that, on April 17, 2020, the foregoing document was electronically filed with the Clerk of Court using the Court's CM/ECF system which will send notification of such filing to all counsel of record, including counsel of record for Plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC.

/s/Katherine Vidal

Katherine Vidal